



JACKSON WALKER LLP
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June 13, 2008

By Facsimile (212) 805-6382

Hon. Victor Marrero
United States District Courthouse
500 Pearl St., Room 660
New York, NY 10007

**USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6-16-08**

Re: *Brian Ritchie, individually and d/b/a Violent Femmes v. Gordon Gano, individually and d/b/a Gorno Music a/k/a Gorno Music (ASCAP) a/k/a Gorno Music Publishing*, No. 07-CIV-7269 (VM), in the United States District Court for the Southern District of New York

Dear Judge Marrero:

We represent the Plaintiff, Brian Ritchie, individually and d/b/a Violent Femmes (the "Plaintiff"), in the above-referenced matter.

After due consideration, we intend to file a motion with the Court for the disqualification of opposing counsel under theories of successive and concurrent conflicts of interest, and violation of the witness-advocate rule (the "Motion to Disqualify"). In connection therewith, the Motion to Disqualify will also request partial summary judgment on the Plaintiff's fifth cause of action (declaration that a partnership relationship exists, and has existed since at least the negotiation of the contested 2001 Agreement, between the parties) because the finding of a partnership relationship is relevant to the Court's analysis of the aforementioned successive conflict of interest ground for disqualification.

We also intend to file a second motion with the Court for the immediate stay of the discovery while the Court considers the issue of disqualification (the "Motion to Stay Discovery").

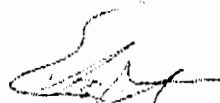
By this letter, we respectfully request the Court's permission to file the Motions to Disqualify and to Stay Discovery without need of a pre-motion conference. *See* Individual Practices of U.S.D.J. Victor Marrero, Rule II(A) (Sept. 9, 2006). Our request is based, in part, on the presumption that opposing counsel will in no way concede or otherwise allow their disqualification from this suit. The basis for this presumption is reflected in the recent exchange of e-mail correspondences between the undersigned and opposing counsel regarding the satisfaction of our meet-and-confer obligations. A true and correct copy of said e-mail correspondences is enclosed herewith as Exhibit "A".

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 June 13, 2008
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Further, we respectfully request an expedited hearing on the Motion because, pursuant to the scheduling order of Magistrate Judge James Francis entered on March 12, 2008, fact discovery in the above-referenced matter ends on June 30, 2008. The "inconvenient" timing of the Motion is unintentional. It is our understanding that, based on the parties' interim pretrial conference with Magistrate Judge Francis held on March 12, 2008, the Court would not entertain a motion to disqualify opposing counsel until sometime after the initial exchange of discovery, and we did not identify the documents evidencing the grounds for disqualification until after our review of 18,335 disorganized pages of documents produced on or about early April, 2008 pursuant to third party subpoenas issued to Robert S. Meloni (counsel of record in the instant case) and Alan N. Skiena.

Thank you in advance for your consideration of this request. Please do not hesitate to contact me directly at (512) 236-2304 should you have any questions.

Sincerely,



Emilio B. Nicolas

Enclosure

cc: Robert S. Meloni
 Thomas P. McCaffrey
 Meloni & McCaffrey, P.C.
 1350 Avenue of the Americas, Suite 3100
 New York, New York 10019
 R.Meloni@m2law.net; T.McCaffrey@M2Law.net

Lawrence A. Waks [Firm]
 Daniel Scardino [Firm]

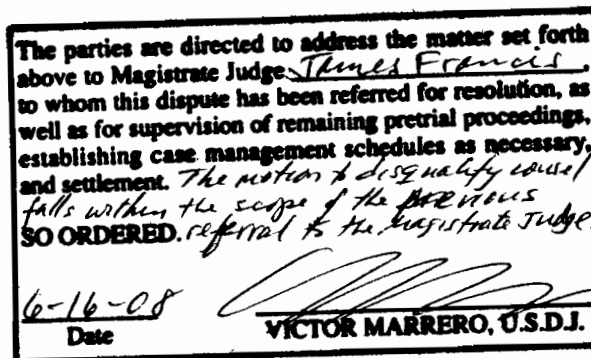


EXHIBIT A

Nicolas, Emilio

From: Thomas McCaffrey [T.McCaffrey@M2Law.net]
Sent: Thursday, June 12, 2008 1:58 PM
To: Nicolas, Emilio
Subject: RE: Ritchie v. Gano - meet and confer

Dear Mr. Nicolas: Do not assume anything from my response, including, without limitation, that you have satisfied any obligation. As I told you in my email yesterday, I could not confirm if Mr. Meloni would be available for a conference call this afternoon, and indeed, Mr. Meloni is out of the office. Therefore he is not available at the date/time you have proposed for the conference call. Sincerely, Thomas McCaffrey

From: Nicolas, Emilio [mailto:enicolas@jw.com]
Sent: Thursday, June 12, 2008 2:35 PM
To: Thomas McCaffrey
Cc: Robert Meloni; Waks, Larry; Scardino, Daniel
Subject: RE: Ritchie v. Gano - meet and confer

Dear Mr. McCaffrey:

I will take your response to mean that you oppose the motion to disqualify and, therefore, we have satisfied the meet-and-confer obligation. Is my assessment of the situation correct?

Please be advised that we may also file two motions ancillary to the motion to disqualify: (a) a motion for partial summary judgment on Plaintiff's fifth cause of action concerning the existence of a partnership relationship between Plaintiff and Defendant, which we believe is necessary to the Court's determination of disqualification for successive conflicts of interest; and (b) a motion to stay discovery while the issue of disqualification is pending. Do you oppose these ancillary motions, or would you like to discuss them during the 2:30 p.m. CST / 3:30 p.m. EST conference call?

If I do not receive a written response to this e-mail before 2:30 p.m. CST / 3:30 p.m. EST, then I will consider your lack of response to mean: (x) you oppose the motion to disqualify and its two ancillary motions; (y) the meet-and-confer obligation has been satisfied; and (z) there is no need for the 2:30 p.m. CST / 3:30 p.m. EST conference call.

Sincerely,

Emilio Nicolas

Emilio B. Nicolas, Esq.
Jackson Walker L.L.P.
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Austin, Texas 78701
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From: Thomas McCaffrey [mailto:T.McCaffrey@M2Law.net]

6/12/2008

Ritchie v. Gano - meet and confer

Sent: Wednesday, June 11, 2008 5:33 PM
To: Nicolas, Emilio
Cc: Robert Meloni
Subject: RE: Ritchie v. Gano - meet and confer

If you are truly considering filing what we consider to be a frivolous motion, note that Judge Marrero's rules require a letter to the Court requesting a pre-motion conference. The rules do not require that counsel confer before you make your written request. Besides, we have made our position on that issue clear, and nothing in the past six months has changed that position.

From: Nicolas, Emilio [mailto:enicolas@jw.com]
Sent: Wednesday, June 11, 2008 5:34 PM
To: Thomas McCaffrey
Cc: Robert Meloni
Subject: RE: Ritchie v. Gano - meet and confer

It is a motion to disqualify.

Emilio B. Nicolas, Esq.
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From: Thomas McCaffrey [mailto:T.McCaffrey@M2Law.net]
Sent: Wednesday, June 11, 2008 4:07 PM
To: Nicolas, Emilio
Cc: Robert Meloni
Subject: RE: Ritchie v. Gano - meet and confer

Robert is in Court. I am not sure if he is available tomorrow afternoon. I will have him contact you when he returns to the office. In the meantime, to make any conference that we may have more productive -- in light of the proposed imminent filing date -- what is the nature of the proposed motion?

From: Nicolas, Emilio [mailto:enicolas@jw.com]
Sent: Wednesday, June 11, 2008 4:43 PM
To: Robert Meloni; Thomas McCaffrey
Cc: Waks, Larry; Scardino, Daniel; Bales, Larry
Subject: Ritchie v. Gano - meet and confer

Dear Counselors:

We want to schedule a conference call for tomorrow afternoon at 2:30 p.m. CST / 3:30 p.m. EST; we will initiate the call. Specifically, we want to discuss a motion that may be filed as early as Friday, June 13, 2008. Please contact us should

6/12/2008

Ritchie v. Gano - meet and confer

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you have any scheduling conflicts.

Sincerely,

Emilio Nicolas

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6/12/2008



JACKSON WALKER L.L.P.
ATTORNEYS & COUNSELORS

FACSIMILE

DATE	June 13, 2008	DIRECT DIAL NUMBER:	512.236.2304
FROM:	Emilio Nicolas	DIRECT FAX NUMBER:	512.236.2002

NAME	COMPANY NAME	FACSIMILE NUMBER	PHONE NUMBER
Hon. Victor Marrero	United States District Court	212-805-6382	

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MESSAGE: